BRIEF OF AMICI CURIAE.

Introduction.

The States of Colorado, Connecticut, Florida, Georgia, Indiana, Kenucky, Missouri, North Dakota, Ohio, Texas, Utah and Wyoming, sovereign states of the United States of America, join in filing this brief as *amici curiae* in support of the petition for a writ of certiorari, and the contention of the Department of Banking, State of Nebraska, that a non resident creditor is not required to go to the domiciliary state of an insolvent interstate insurer in order to prove the merits of his claim, but may invoke his local jurisdiction to secure such an adjudication in cases where the local state has a public policy of subordinating and transmitting local assets of the insurer to the domiciliary liquidator.

Interest of the Amici Curiae.

The states which have joined in filing this brief as amici curiae, have no interest in the outcome of this cause insofar as the facts or merits of the particular case are concerned. The named states believe, that the rule which seems to have been adopted below, is erroneous, because it unreasonably restricts the powers of a state to regulate a foreign insurance corporation by denying it the right to compel such insurer, in the event of insolvency, to answer in its domestic courts for breach of contract made in the state with its residents. The rule adopted below, would, as we understand it, require the non resident creditor in *all* cases, to come to the chartering state of such insurer in order to secure a determination of the merits of his claim, which to us, seems to place a rather heavy burden on the citizens of our re-

spective states, a burden which they did not assume when they did business in their own states with the foreign insurer.

Statement of the Case.

The authors of the brief adopt the statement of the case as set forth in the petition and brief of the Department of Banking, State of Nebraska.

The Issues Involved.

The question presented is whether a state which has admitted a foreign insurance corporation to do business within its borders, conditioned upon the requirement that it submit to the jurisdiction of that state so long as there are outstanding liabilities against the insurer in the state, may, in the case of insolvency of such insurer, entertain jurisdiction in a suit brought by a resident claimant against the insurer. The question is limited to the case of a state which has a public policy of subordinating and transmitting the assets of the insolvent insurer to the domiciliary receivership.

Argument and Citation of Authority.

We have always supposed that a state had power to exclude a foreign corporation from doing business unless it consented to submit to reasonable conditions which were deemed necessary for the protection of its citizens. In an endeavor to secure to its citizens a remedy in its own jurisdiction with respect to claims arising out of business transacted in the state, the condition has been imposed that a foreign corporation submit to its jurisdiction in order that its residents be not compelled to follow it to its home state for redress of their griev-

ances. Jurisdiction over such corporations is predicated on consent so given, or consent failing, on their presence in the state by virtue of having transacted business there.

Lafayette Ins. Co. v. *French*, 18 How. (U. S.) 404, 407.

St. Clair v. *Cox*, 106 U. S. 350, 355.

Conn. Mutual Life Ins. Co. v. *Spratley*, 172 U. S. 602, 619.

Nierbo Co. v. *Bethlehem Ship. Corp.*, 308 U. S. 165.

Experience has demonstrated that it was necessary, in order to furnish adequate protection to its citizens, to provide by legislation and regulation, that such submission to the local jurisdiction shall continue notwithstanding the withdrawal of the foreign corporation from the state, so long as there were outstanding liabilities against the corporation in the state. A state having thus acquired jurisdiction over a foreign corporation may not be ousted of such jurisdiction by the withdrawal of the corporation from the state, be that withdrawal voluntary or involuntary.

Mutual Reserve Life Assn. v. *Phelps*, 190 U. S. 147.

Washington ex rel Bond & G. & T. v. *Superior Court*, 289 U. S. 361.

As a matter of historical fact, it was the expansion of the insurance business, the writing of policies of insurance by large corporations, chartered in the Eastern states, that prompted the enactment of the protective measures referred to.

The rule suggested by the Courts below, seems to us to hold, that in the event of insolvency of a foreign in-

surer and the commencement of liquidation proceedings in the state of its domicil, all non resident creditors *must* come to the home state of such insurer in order to prove their claims and be permitted to share in the distribution of assets. This rule is to be applied we understand, although a sister state has declined to permit its residents to secure preferential treatment through the process of attaching local assets, and has turned over all property of the insolvent insurer to be distributed by the domiciliary receivership.

It is difficult for us to perceive why, under such circumstances, a non resident creditor should be put to the trouble and expense of coming to New York to secure an adjudication of the merits of his claim. The insurer answered in the courts of the respective states while it was a going concern, and we see no basis for the suggestion that our courts will depart from established principles of law and justice to favor the claims of its own citizens in the receivership of an insurer which did a national business. The fear of local favoritism is not only groundless, but is negatived by the application of a policy by a state of transferring and surrendering all assets and property of the insurer to the home liquidator.

Clark v. *Williard*, 292 U. S. 112; 294 U. S. 211. Annotations, 98 A. L. R. 351.
Fischer v. *American United Ins. Co.*, 314 U. S. 549.

If the rule declared below is now adhered to, it will be necessary for the respective states to enact new measures to secure for its citizens the necessary protection so that upon insolvency of an interstate insurer, they

will not be required to come to the home state of such insurer for satisfaction of their claims. The only measures that we can now see which will be adequate to furnish such protection, is to require each foreign insurer to deposit liquid securities in an amount sufficient to answer for liabilities accrued under business transacted in our respective states.

This we feel would involve a profound and substantial change in our dealings with foreign insurers. Liquid assets would be taken out of productive use and the type of security would vary with the investment requirements of each state resulting in additional supervision and regulation. Insolvency will tend to promote competition between the states rather than cooperation. Such a policy would be harmful to business and unnecessarily retard and impede growth of corporate enterprise. We would be reluctant to adopt such a policy of regulation and supervision, and we feel it is not necessary to do so. Especially so since this would not deprive the federal courts of entertaining jurisdiction (cf. *Fischer v. American United Ins. Co.*, supra). Yet if a judgment secured under circumstances as here set forth is not recognized in the home state of a foreign insurer, the states are given no alternative but to adopt such a policy since nothing less will protect its citizens against the requirement that they come to the chartering state of an insolvent insurer in order to prove their claims.

In addition to what is said herein the States filing this brief amici curiae, adopt the argument and citations contained in the petition and brief filed by the petitioner, and add their request that the petition for a writ of cer-

tiorari be granted. and the judgment of the Court below be reversed and the foreign judgment sustained.

Respectfully submitted,

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